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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 6469

SAMUEL HUNTER,
Petitioner,

v.

ROGER LOCHER, BUICK MOTOR DIVISION, GENERAL MOTORS CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW; and ROLF VALTIN
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

(Locher, Buick, and G. M. Corp.)

RULINGS BELOW

The decisions of the United States Court of Appeals for the Sixth Circuit and the United States District Court are contained in Respondent's Appendix submitted herewith.

QUESTION PRESENTED

Whether the District Court was correct in deciding that the Plaintiff was bound by the decision of the Impartial Umpire?

ARGUMENT

The Petitioner alleged that he was mistreated by a decision of Rolf Valtin, the Umpire designated by Defendants, General Motors Corporation and the International Union (UAW), to arbitrate the disputes arising out of the Collective Bargaining Agreements which define the terms and conditions of employment of General Motors UAW-represented employes. Stated simply, he did not receive the decision he wished from the Umpire and he is attempting to seek relief outside the grievance procedure.

The Collective Bargaining Agreement provides that the Umpire's decision is final and binding on the Union and its members.

The District Court, in ruling on the motions to dismiss, cited *United Steelworkers of America v. Enterprise Corp.*, 363 U.S. 593 (1960) in which this court stated:

> "The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." 363 U.S. 593, at 596.

It is submitted that the *Enterprise* case is controlling and, therefore, the Respondent respectfully suggests that certiorari be denied.

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Dated: February 18, 1971

APPENDIX OF RESPONDENTS IN OPPOSITION

IN THE

District Court of the United States

For the Eastern District of Michigan
Southern Division

Samuel Hunter
Plaintiff
v.
Roger Locher, et al.
Defendants

Civil Action
No. 34179

RULING ON DEFENDANT'S MOTION TO DISMISS

This is a civil action for money damages brought by plaintiff, formerly an hourly employee of General Motors Corporation, Buick Motor Division, against the following parties: General Motors; Roger Locher, a supervisory employee at Buick Motor Division in Flint, Michigan; the International Union, UAW, which represents hourly-rated production and maintenance employees at Buick; and Rolf Valtin, an Umpire designated by GM-UAW to arbitrate disputes arising out of the collective bargaining agreement between the two parties.

Plaintiff apparently relies on the Labor Management Relations Act (Taft-Hartley), §301(a), 29 U.S.C. §185(a) (1964), in bringing this action, charging that the decision of the Umpire which resulted in plaintiff's discharge as of

March 31, 1968 evidenced "[n]egligence, abuse of discretion, harassment and coercion" and violated the Taft-Hartley Act and the 5th Amendment due process clause (see p. 3, ¶12 of the complaint), and asking the court to "overturn the umpire's decision after examining all the facts." (See p. d, ¶34 of the complaint.)

Defendants filed motions to dismiss on the grounds that the plaintiff failed to state a claim for which relief could be granted, and failed to exhaust his administrative remedies.

It is well-settled labor policy that considerable emphasis is placed on the means chosen by parties to a collective bargaining agreement to settle disputes arising under that agreement.

> "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." . . . 29 U.S.C. §173(d).

The agreement between the parties in this case provided for an elaborate grievance procedure which culminated in submission of the grievance to an impartial umpire for final decision. It is provided in the agreement that

> "(53) There shall be no appeal from the Umpire's decision, which will be final and binding on the Union and its members, the employe or employes involved and the Corporation. The Union will discourage any attempt of its members, and will not encourage or cooperate with any of its members, in any appeal to any Court or Labor Board from a decision of the Umpire.
>
> With respect to the processing, disposition and/or settlement of any grievance initiated under the Griev-

ance Procedure Section of this Agreement, and with respect to any court action claiming or alleging a violation of this Agreement or any local or other agreement amendatory or supplemental hereto, the Union shall be the sole and exclusive representative of the employe or employes covered by this Agreement. The disposition or settlement by and between the Corporation and the Union, of any grievance or other matter, shall constitute a full and complete settlement thereof and shall be final and binding upon the Union and its members, the employe or employes involved and the Corporation." Agreement between General Motors Corporation and the Law. (sic) [UAW] December 15, 1967, ¶53.

The Supreme Court has also enunciated the policy of encouraging private settlement of grievances and has prohibited courts from reviewing an umpire's decision on the merits. *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Corp.*, 363 U.S. 593 (1960). In the *Enterprise* case the Court stated:

"The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." 363 U.S. 593, at 596.

"This plenary review by a court of the merits [of every construction of the contract] would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final. This

> underlines the fundamental error which we have alluded to in *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 . . . decided this day. As we there emphasized, the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." 363 U.S. 593, at 599.

These cases have been relied on as controlling in situations similar to that in the instant case. In words which address themselves to several allegations made by plaintiff in this case, the Fifth Circuit Court of Appeals stated in *International Bro., Union No. 874 v. St. Regis Paper Co.*, 362 F.2d 711 (5th Cir. 1966):

> "We think it is settled law that an award of an arbitrator under an arbitration provision in a collective bargaining agreement, which provides the arbitrator's decision shall be final and binding on the parties, is not open to review on the merits. The merits embrace not only asserted errors in determining the credibility of witnesses, the weight to be given their testimony, and the determination of factual issues, but also the construction and application of the collective bargaining agreement . . ." 362 F.2d 711, at 714.
>
> "And it matters not that this court, if the merits of the award were open to review, might differ with the arbitrator with respect to his findings of fact and might place a different construction on the agreement than did the arbitrator." . . . 362 F.2d 711, at 715.

Thus it is clear that this Court has no power to examine the umpire's decision as requested by the plaintiff in his complaint. For the above reasons defendants' motions to dismiss are Granted. Appropriate orders may be submitted.

/s/ Stephen J. Roth
United States District Judge

Dated: June 16, 1970

ORDER AND JUDGMENT

At a session of said Court held in the Federal Building, Flint, Michigan, this 22nd day of June, A.D. 1970.

Present: Honorable Stephen J. Roth, United States District Judge.

This cause having come to be heard upon Defendants' Motion for Dismissal pursuant to Rule 12 of the Federal Rules of Civil Procedure, and this Court having issued its ruling on June 16, 1970 granting said Motion, it is hereby

Ordered that Defendants' Motion for Dismissal be granted; and it is further

Ordered that the complaint be, and the same is, hereby dismissed against Defendants, and each of them.

Stephen J. Roth
United States District Judge

IN THE

United States Court of Appeals for the Sixth Circuit

Samuel Hunter
Plaintiff-Appellant
v.
Roger Locher, et al.
Defendants-Appellees

No. 20,632

ORDER

Before: Celebrezze, Peck and Brooks, Circuit Judges.

This appeal having been considered by a panel of this Court pursuant to Rule 3(a) of the Rules of this Court, and it appearing upon consideration of the briefs and record in the case that the appeal is frivolous and entirely without merit, *United Steelworkers of America v. Enterprise Wheel & Car Corporation*, 363 U.S. 593 (1960), under the provisions of Rule 9 of the Rules of this Court.

It is Ordered that this appeal be and it hereby is dismissed.

Entered by Order of the Court

Carl W. Reuss
Clerk

(Filed October 19, 1970)